



August 8, 2012

44 Montgomery Street  
Suite 400  
San Francisco, CA  
94104-4606

415.989.5900  
415.989.0932 Fax  
www.cbmlaw.com

Los Angeles  
Sacramento  
Walnut Creek

Gregg McLean Adam  
Direct Dial: 415.743.2534  
gadam@cbmlaw.com

**VIA EMAIL AND REGULAR MAIL**

Alex Gurza  
Deputy City Manager  
Office of the City Manager, City of San Jose  
200 E Santa Clara St  
San Jose, CA 95113

**Re: San Jose POA's DEMAND TO CITY TO CEASE AND DESIST  
Outsourcing of Background Investigations  
File No. 038780**

Dear Alex:

Thank you for your letter this afternoon, which I received about 15 minutes ago, as I write this. The POA will shortly file a demand for arbitration based upon your denial of the grievance. We intend to try to arbitrate this issue as soon as possible.

Two outcomes are possible: If the arbitrator rules in the POA's favor, then the City may be prohibited from proceeding with its proposed outsourcing of background investigations. *If* the arbitrator rules in the City's favor, then the POA will request to participate in the impasse resolution procedures, which you offer in your letter. But the grievance arbitration must come first.

Unfortunately, on page 2 of your letter, the City threatens to proceed – presumably right away – "with performing backgrounding using contractual services while the POA utilizes these procedural processes." Putting aside the grievance, such conduct is a clear violation of the City's obligation to meet and confer under both the Charter and state law. As you well know, impasse resolution procedures must be exhausted, in full, before the City makes any changes in working conditions.

Returning to the grievance, the POA is concerned that the City's action would interfere with the arbitrator's ability to render a full remedy if the grievance is sustained. Accordingly, unless the City voluntarily agrees – **by close of business, tomorrow, Thursday, August 9, 2012** – to withdraw its threat to proceed with using contractual services to perform background

Alex Gurza

Re: San Jose POA's DEMAND TO CITY TO CEASE AND DESIST  
Outsourcing of Background Investigations

August 8, 2012

Page 2

investigations until such time as an arbitrator can render a decision on the POA's grievance, the POA will seek to enjoin the City's proposed action.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP



Gregg McLean Adam

GMA:jo

cc: Jennifer Schembri, Assistant to City Manager  
Jim Unland, President, SJPOA  
John Robb, Vice President, SJPOA  
Franco Vado, Chief Financial Officer, SJPOA